



United States  
Department of  
Agriculture

Farmers  
Home  
Administration

Washington  
D.C.  
20250

FmHA AN No. 2610 (1940)  
August 7, 1992

SUBJECT: Highly Erodible Land and Wetland Conservation Certification

TO: State Directors, District Directors and County Supervisors

ATTN: Farmer Programs Chiefs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the requirement that any applicant/borrower leasing land upon which FmHA funds will be applied provide a written agreement of the terms and conditions of the lease. The guidelines set forth in this AN are intended to ensure consistency between FmHA and those USDA agencies involved in highly erodible land (HEL) and wetland (W) conservation certification.

COMPARISON WITH PREVIOUS ANs:

This AN revises and replaces AN No. 2489(1940), issued March 7, 1992.

IMPLEMENTATION RESPONSIBILITIES:

In accordance with FmHA Instruction 1940-G, Exhibit M, adequate documentation is required to certify applicant compliance with the HEL/W provisions of the Food Security Act (FSA) prior to approving FmHA assistance.

As of January 1, 1990, all farmers producing an agricultural commodity, as defined in Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of Exhibit M, on HEL fields must have had an approved conservation plan in place and should have started implementation of the plan. Additionally, all applicants must complete Form AD-1026, "Highly Erodible Land Conservation and Wetland Conservation Certification," or Form AD-1026U, "Highly Erodible Land Conservation and Wetland Conservation Update," with assistance from ASCS, certifying that they are in compliance with the provisions of the FSA. ASCS will provide to the applicant and FmHA Form AD-1026A attached to the completed Form AD-1026 or AD-1026U to show all tracts containing HEL fields and their conservation plan status.

EXPIRATION DATE: October 31, 1993

FILING INSTRUCTIONS:  
Preceding FmHA  
Instruction 1940-G



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Complaints of discrimination should be sent to:  
Secretary of Agriculture, Washington, D.C. 20250

Tracts containing HEL fields listed on Form AD-1026A will be cross-checked by FmHA with those listed on the conservation plan for accuracy. ASCS records will be considered adequate unless there is a discrepancy in reported tracts from the conservation plan or there is reason to doubt their completeness or accuracy. The applicant's Farm and Home Plan must be reviewed by FmHA to determine if provisions for implementing the required practices are included, and if a feasible plan of operation can be developed which includes the costs and impact of implementing the conservation plan. Consideration must also be given to practices required in the conservation plan in future years.

Any applicant or borrower leasing farm land upon which FmHA funds will be applied should provide a copy of any lease, contract, option, or agreement which may be pertinent to consideration of the application, in accordance with FmHA Instruction 1910-A, Section 1910.4(b)(11). When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement should be included in the loan docket.

For those applicants who own or are leasing land at the time of application, ASCS will review the completed Form AD-1026 or AD-1026U to determine if referral to SCS is necessary. ASCS will forward the form to SCS if the applicant answers "yes" to any of questions 10, 11, 12, or 13 on the Form AD-1026, to include: 1) when HEL determinations have not been made for land on which the applicant intends to produce an agricultural commodity and 2) when W determinations have not been made. SCS will then provide Form SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination," to document the presence of HEL or W. FOR FSA PURPOSES, THE FORM SCS-CPA-026 WILL BE GENERATED ONLY WHEN ASCS REFERS FORM AD-1026 TO SCS FOR AN HEL/W DETERMINATION. Form SCS-CPA-026 is not required for subsequent loans after it has been provided for an initial loan unless there is either a change in the property upon which FmHA loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption.

After a Form AD-1026 has been filed, if borrowers/applicants acquire additional farm land or change their operations within the same crop year, ASCS requires that the Form AD-1026 be revised to include the additional land or the change in the operation. If ASCS determines that a HEL/W determination is needed, they will forward the Form AD-1026 to SCS for the required SCS determination(s), and a Form SCS-CPA-026 will be generated. Applicants are required to complete a Form AD-1026 or AD-1026U for each crop year that FmHA funds are requested.

Presence of HEL fields to be used for the production of agricultural commodities as defined above requires an approved conservation plan which will be reviewed by FmHA to determine if a feasible plan of operation can be developed which includes the costs and impact of implementing the conservation plan. If the proposed conservation practices are not feasible for loan making purposes, the application will be rejected unless SCS can revise the proposed plan such that a feasible plan of operation can be developed. If HEL fields are not present or agricultural commodities are not to be produced on HEL

fields, a conservation plan is not necessary for FSA purposes. Loan assistance will not be provided until this process of documentation is complete.

ASCS and SCS will spot check a percentage of all producers for compliance with the FSA. Their sharing of data and the use of Form AD-1026 will ensure that we are informed, in writing, of producers not in compliance. SCS will provide FmHA with a report of the annual status reviews, including dates of the spot checks, the borrowers reviewed, and the results of each review. FmHA will, in all routine loan making and supervisory visits, be on the alert for possible violations of the provisions of the FSA, and monitor the borrower's progress in meeting the conditions of the conservation plan, if applicable. The status of the borrower's compliance with the provisions of the FSA and the conservation plan, if applicable, will be documented in the running record in the case file. A current copy of the approved conservation plan, signed by the applicant and a SCS representative, will be filed in the SCS office and will be available for FmHA use. A copy of the plan will not be automatically required in the borrower's FmHA file. State Directors may, at their discretion, require a copy of the plan in the file through a State AN.

FmHA officials shall not make technical decisions regarding borrower compliance. If FmHA questions borrower compliance, ASCS and SCS will be notified, in writing, and requested to determine compliance. Borrowers found to be in non-compliance of HEL or W conservation will be considered ineligible for further FmHA assistance until they are brought back into compliance. Additionally, County Supervisors will review all loans made to borrowers that were originally subject to the provisions of Exhibit M to determine if loan proceeds were used for any purpose that contributed to either the excessive erosion of HEL or the conversion of W as defined in this Exhibit. If it is determined that loan proceeds were used for a prohibited activity, the affected loans will be considered to be in non-monetary default and handled in accordance with FmHA Instruction 1951-S. A copy of the plan should then be obtained from SCS and placed in the borrower's file in case the Agency must take appropriate action to enforce the covenants of loan instruments. ASCS will track those producers in non-compliance.

State personnel with questions regarding this AN should contact Penny L. Shirley, Farmer Programs Loan Making Division, at (202) 720-1656.

This AN may not be revised and reissued by State Directors without prior approval by the Assistant Administrator, Farmer Programs, unless modification is necessary to comply with State law.



LA VERNE AUSMAN  
Administrator

2610(1940)

Sent by Time Delay Option to States at 12:00 on 8/11/92 to Districts at 2:00 on 8/11/92 and to Counties at 4:00 on 8/11/92 by GSS.